Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	
	)	CC Docket No. 96-61
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

COMMENTS OF U S WEST, INC.

Laurie J. Bennett
Robert B. McKenna
Jeffry A. Brueggeman
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2763

Attorneys for

U S WEST, INC.

Of Counsel,
Dan L. Poole

October 31, 1997

TABLE OF CONTENTS

Page

SUMMARY

U S WEST, Inc. ("U S WEST") hereby submits its comments in support of various petitions for reconsideration, forbearance and/or clarification of the Federal Communications Commission's ("Commission") Reconsideration Order in the above-referenced docket.

In its Reconsideration Order, the Commission held for the first time that rate integration applies to Commercial Mobile Radio Service ("CMRS") carriers, as well as across independent affiliated companies. The Commission's modified rate integration rule – which applies to interstate, interexchange services in every mainland State – was adopted without any real record support for its breadth of scope.[1] Absent reconsideration or clarification, the Commission's rate integration rule will have far-reaching anti-competitive consequences.

The petitioners have identified a number of compelling reasons why the Commission should not apply its rate integration rule to CMRS carriers, or to carriers which they control or own. First, the Commission did not provide lawful notice of its decision to integrate interstate, interexchange CMRS rates. Second, the Commission's significant expansion of its existing rate integration policies to include CMRS is plainly inconsistent with the Congressional intent underlying Section 254(g) of the Communications Act of 1934, as amended. Third, the requirement to integrate CMRS rates undermines Congress' deregulatory paradigm for CMRS. Fourth, requiring CMRS carriers to integrate their rates is anti-

[1] 47 U.S.C. § 254(g).

competitive and unnecessary to protect customers in rural and offshore areas. Fifth, as a practical matter, rate integration does not make sense in the CMRS context.

In the alternative, the Commission should forbear from applying Section 254(g) and Section 64.1801 of its rules to CMRS carriers pursuant to its Section 10 authority. As demonstrated in numerous petitions, giving CMRS carriers the freedom to meet consumer needs produces significant public interest benefits, whereas rate integration is an unnecessary regulatory burden that dampens the ability of competitors to respond to these consumer needs. The Commission need not conduct a new examination of the forbearance issue because it has already found that the forbearance standard is satisfied with respect to CMRS rate regulation.

If the Commission believes that it does not have sufficient factual support on the record for exercising its forbearance authority, then the Commission should, at a minimum, commence a rulemaking proceeding to determine how its rate integration rule should apply to CMRS carriers. Such action is necessary to consider the far-reaching effects that its rate integration rule will have on CMRS carriers and their customers. Further, if the Commission does ultimately decide to require CMRS carriers to integrate their rates, then U S WEST believes that a more sensible rule could be crafted which would protect consumers in offshore areas from discrimination while preserving free and uninhibited competition in the CMRS marketplace.

Finally, as numerous petitioners demonstrated, an overly broad application

of the Commission's "affiliate requirement" could have serious anti-competitive effects that would be severely disruptive to the operations of both wireless and wireline carriers. In addition, a rate integration rule that requires competing wireless or wireline carriers to share pricing information and to jointly establish an integrated rate structure would raise serious antitrust concerns. Thus, the Commission should clarify the scope of the affiliate requirement in line with the express reasoning behind the rate integration rule.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	
	)	CC Docket No. 96-61
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby submits its comments in support of various petitions for reconsideration, forbearance and/or clarification of the Federal Communications Commission's ("Commission") Reconsideration Order in the above-referenced docket.[1]

I. INTRODUCTION

In its Reconsideration Order, the Commission held for the first time that rate integration applies to Commercial Mobile Radio Service ("CMRS") carriers, as well as across independent affiliated companies. This represents an unwarranted expansion of the Commission's prior rate integration policies which appropriately

---

[1] Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, First Memorandum Opinion and Order on Reconsideration, FCC 97-269, rel. July 30, 1997 ("Reconsideration Order"); appeal pending sub nom. GTE Service Corporation, et al. v. FCC, 97-1538 (D.C. Cir.). Petitions filed Oct. 3, 1997 by PrimeCo Personal Communications, L.P. ("PrimeCo"), Cellular Telecommunications Industry Association ("CTIA"), Personal Communications Industry Association ("PCIA"), AirTouch Communications ("AirTouch"), Bell Atlantic Mobile, Inc. ("Bell Atlantic"), Telephone and Data Systems, Inc. ("TDS"), and BellSouth Corporation ("BellSouth").

helped to ensure that customers in offshore States and territories such as Alaska and Hawaii are not charged unjustifiably higher rates for interstate, interexchange services than customers in other States. The Commission's modified rate integration rule – which now applies to interstate, interexchange services in every mainland State – was adopted without any real record support for its breadth of scope.[2] Absent reconsideration or clarification, the Commission's rate integration rule will have far-reaching anti-competitive consequences.

The detrimental effects of the Commission's rate integration rule were recently brought to the Commission's attention when PrimeCo filed a request for a stay of the rule as applied to CMRS carriers, and to carriers which they control or own.[3] In granting a partial stay of the Reconsideration Order, the Commission recognized that PrimeCo and other parties raised "significant issues including potential anti-competitive impacts of requiring rate integration across affiliates that may require alteration of the rule with respect to CMRS affiliates."[4] The situation involving PrimeCo and its multiple owners that gave rise to the Stay is just one example of the unreasonable and apparently unintended results of the Commission's overly broad rate integration rule. Thus, U S WEST urges the

---

[2] 47 U.S.C. § 254(g).

[3] Motion for Stay of Enforcement of PrimeCo Personal Communications, LP, filed herein Sep. 23, 1997 ("Stay").

[4] Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Order, FCC 97-357 ¶ 14, rel. Oct. 3, 1997 ("Stay Order").

Commission to take this opportunity to resolve rate integration issues on a permanent basis.

II. THE COMMISSION SHOULD NOT APPLY ITS RATE INTEGRATION RULE TO CMRS CARRIERS, OR TO CARRIERS WHICH THEY CONTROL OR OWN

The petitioners have identified a number of compelling reasons why the Commission should not apply its rate integration rule to CMRS carriers, or to carriers which they control or own. First, the Commission did not provide lawful notice of its decision to integrate interstate, interexchange CMRS rates.[5] In the Reconsideration Order, the Commission held – without any substantive discussion of the need for integrating CMRS interstate, interexchange rates or of the repercussions of such a requirement for CMRS carriers and their customers – that its rate integration rule applies to CMRS. In fact, the Commission's lone reference to integration of interstate CMRS rates appears in the subordinate clause of a sentence clarifying that the rates for interstate, interexchange services do not have to be integrated with the rates for other interstate, interexchange services.[6] As numerous petitioners have demonstrated, however, there are highly significant and compelling implementation issues that would be raised by CMRS rate integration, issues which were not addressed at all in the Reconsideration Order. The Commission's failure to solicit any comment, develop any evidentiary record, or provide any substantive discussion of the repercussions of its decision to extend its rate integration requirement to CMRS makes the decision legally insupportable.

[5] PrimeCo Petition at 6-11; Bell Atlantic Petition at 5-6; BellSouth Petition at 6-7.

Second, the Commission's significant expansion of its existing rate integration policies to include CMRS is plainly inconsistent with the Congressional intent underlying Section 254(g) of the Communications Act of 1934, as amended (the "Act").[7] As Congress made clear and the Commission itself acknowledged, the purpose of Section 254(g) was to "incorporate the Commission's existing rate integration policy."[8] The Commission had never before imposed any type of rate integration requirement on interstate CMRS. Congress certainly did not direct the Commission to diverge from its existing rate integration policies by requiring integration of CMRS rates – and the Commission may not claim that it has any mandate to do so under the guise of implementing Section 254(g).

Third, the requirement to integrate CMRS rates undermines Congress' deregulatory paradigm for CMRS.[9] In 1993, Congress found that minimal regulation of CMRS would promote vigorous competition, enhance service and stimulate innovation.[10] Since then, the Commission has repeatedly held that CMRS regulations must be supported by a compelling need and narrowly tailored to achieve their objective.[11] Nowhere in Section 254(g), or in its legislative history, did

---

[6] Reconsideration Order ¶ 18.

[7] CTIA Petition at 2-3; TDS Petition at 3; PrimeCo Petition at 7-8.

[8] Reconsideration Order ¶ 2 (citing S. Rep. No. 230, 104th Congress, 2d Sess. 1, 132 (1996) (Joint Explanatory Statement)).

[9] Bell Atlantic Petition at 9.

[10] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 602(b) (1993).

[11] See, e.g., In Re Petition of the Connecticut Dep't of Public Util. Control, Report and Order, 10 FCC Rcd. 7025, 7031 ¶ 10 (1995), aff'd sub nom., Conn. Dept. of Public Utility Cont. v. FCC, 78 F.3d 842 (2nd Cir. 1996).

Congress suggest that it intended to reverse the fundamental deregulatory policies for CMRS that it adopted in 1993.[12] The Commission had no authority to impose the additional regulatory burden of rate integration on CMRS carriers without demonstrating the need for such regulation or even acknowledging the impact that rate integration will have on CMRS competition.

Fourth, requiring CMRS carriers to integrate their rates is anti-competitive and unnecessary to protect customers in remote and offshore areas.[13] The Reconsideration Order effectively eliminates the price competition that has evolved among CMRS providers by discouraging carriers from engaging in the types of local competitive responses which lead to lower rates for wireless consumers. For example, PCS carriers are entering the local market in competition with incumbent cellular carriers. Requiring PCS and cellular competitors to homogenize their rate structures will result in diminished consumer choice, lessened competition and increased prices.[14] Moreover, competition in rural and offshore areas is sufficiently robust to protect consumers from unreasonable rates. The Commission should recognize that consumers in all areas will be better served if CMRS carriers can

---

[12] Bell Atlantic Petition at 11.

[13] PrimeCo Petition at 13-14; BellSouth Petition at 15-16; PCIA Petition at 6-7.

[14] In light of this competitive environment, the Commission should not require rate integration across cellular-PCS lines in the event that CMRS remains subject to rate integration. BellSouth Petition at 24. The fact that PCS and cellular providers occupy materially different marketing positions – one being new entrants, the other being incumbents – as well as the significant differences in licensing, technology and pricing structures, justifies treating cellular and PCS as distinct services for rate integration purposes.

differentiate themselves from the competition by establishing market-specific prices.

Fifth, as a practical matter, rate integration does not make sense in the CMRS context. CMRS service areas are structured without regard to LATA or state boundaries and therefore do not fit neatly into the Commission's rate integration requirement.[15] In fact, many CMRS carriers have established multi-state, wide-area local calling areas that would have to be eliminated under the Commission's rate integration rule.[16] Further, CMRS customers purchase a single service – the ability to place calls while on the move – that is generally independent of distance. A mobile customer may initiate a call in one State and conclude the call after traveling to an adjacent State, which makes it nearly impossible to identify interstate calls for rate integration purposes.[17] Moreover, CMRS carriers often bundle long distance charges with airtime fees. Thus, even if "interstate, interexchange services" provided by CMRS carriers are integrated, the rates actually paid by offshore customers will vary anyway.[18]

III. IN THE ALTERNATIVE, THE COMMISSION SHOULD FORBEAR FROM APPLYING RATE INTEGRATION TO CMRS CARRIERS

U S WEST supports those petitioners requesting that the Commission forbear from applying Section 254(g) and Section 64.1801 of its rules to CMRS

[15] CTIA Petition at 3; PrimeCo Petition at 12.

[16] PCIA Petition at 10; PrimeCo Petition at 13. The Commission has stayed the application of its rate integration rule to wide area rate plans pending reconsideration to ensure that these plans are not disrupted. Stay Order ¶ 16.

[17] CTIA Petition at 4; AirTouch Petition at 11.

carriers.[19] As demonstrated in numerous petitions, the Commission is required to forbear from applying its rate integration rule to CMRS pursuant to the standard of Section 10 of the Act.[20] Giving CMRS carriers the freedom to meet consumer needs in terms of price, quality and availability of service produces significant public interest benefits that will only increase with the continuing emergence of new CMRS competitors. In contrast, rate integration is an unnecessary regulatory burden that dampens the ability of competitors to respond to these consumer needs. Consumers should not be needlessly deprived of the benefits of competitive rate structures and innovative service offerings.

The Commission need not conduct a new examination of the forbearance issue because it has already found that the forbearance standard is satisfied with respect to CMRS rate regulation. Section 10 of the Act incorporates the same three-prong test for forbearance found in Section 332, which authorizes the Commission to forbear from enforcing most provisions of Title II. Congress amended Section 332 in 1993 to empower the Commission to forbear from regulating CMRS rates. Because rate integration is simply a form of rate regulation, the same findings which the Commission made in reaching that conclusion are equally applicable to rate integration.

---

[18] AirTouch Petition at 9-10; CTIA Petition at 7-8; PCIA Petition at 11.

[19] See, e.g., PCIA Petition at 4-5; PrimeCo Petition at 24-25; CTIA Petition at 10-11; Bell Atlantic Petition at 15-16; TDS Petition at 4-5.

[20] 47 U.S.C. § 160.

IV. THE COMMISSION SHOULD, AT A MINIMUM, COMMENCE A RULEMAKING PROCEEDING TO DETERMINE HOW ITS RATE INTEGRATION RULE SHOULD APPLY TO CMRS CARRIERS

If the Commission believes that it does not have sufficient factual support on the record for exercising its forbearance authority, then the Commission should, at a minimum, commence a rulemaking proceeding to determine how its rate integration rule should apply to CMRS carriers. As discussed in Part II above, the Commission has not compiled a factual record or considered the impact of imposing a rate integration requirement in the CMRS context. The Commission's actions in this proceeding have been fundamentally inconsistent with the concept of reasoned decision-making, which requires an agency to "articulate with reasonable clarity its reasons for decisions, and identify the significance of crucial facts."[21] In order to remedy these procedural defects, the Commission must carefully consider the far-reaching effects that its rate integration rule will have on CMRS carriers and their customers and give interested parties an opportunity to comment on these issues.

Further, if the Commission does ultimately decide to require CMRS carriers to integrate their rates, then U S WEST believes that a more sensible rule could be crafted which would protect consumers in offshore areas from discrimination while preserving free and uninhibited competition in the CMRS marketplace. Such a compromise would be preferable to the overly broad rule adopted by the Commission in the Reconsideration Order. The appropriate forum for fully exploring rate integration issues in the CMRS context is a rulemaking proceeding.

---

[21] Greater Boston Television Corp. v. FCC, 444 F.2d 841, 851 (D.C. Cir. 1970).

V. THE COMMISSION ALSO SHOULD CLARIFY THE SCOPE OF THE AFFILIATE REQUIREMENT AS IT APPLIES TO BOTH WIRELESS AND WIRELINE CARRIERS

As numerous petitioners demonstrated, an overly broad application of the Commission's "affiliate requirement" could have serious anti-competitive effects that would be severely disruptive to the operations of both wireless and wireline carriers.[22] In the Reconsideration Order, the Commission held that rate integration is required across "affiliates" as that term is defined in Section 32.9000 of the Commission's uniform accounting rules.[23] This affiliate requirement was not mandated by the express language of the statute, but rather was created by the Commission. Taken to the extreme, the definition of "affiliate" contained in the Reconsideration Order could raise serious affiliate compliance problems that spiral outward in an expanding daisy-chain.

The potential anti-competitive consequences of the affiliate requirement have been well-documented in the context of the PrimeCo partnership. Not only are the PrimeCo owners potential CMRS competitors in markets nationwide, but they are currently competing against each other in a number of markets. For example, Bell Atlantic (through its subsidiary SouthwestCo) and U S WEST are both providing cellular services in areas of Albuquerque, New Mexico, and Phoenix, Flagstaff, and Prescott, Arizona. Requiring existing and potential CMRS competitors to integrate their rates would harm the public interest by depriving customers of the benefits of competitive rate structures.

---

[22] See, e.g., AirTouch Petition at 14-15; PCIA Petition at 8-9.

Moreover, a rate integration rule that requires competing wireless or wireline carriers to share pricing information and to jointly establish an integrated rate structure would raise serious antitrust concerns.[24] It is a per se violation of the antitrust laws for competitors to agree on the price they will charge for a service or product. Competitors are also prohibited from exchanging competitively sensitive information such as prices and price-affecting terms (e.g., discounts, rebates, credit terms). Therefore, an overly broad application of the affiliate requirement could potentially require carriers to engage in unlawful price-fixing.

The Commission should clarify the scope of the affiliate requirement in line with the express reasoning behind the rate integration rule. The Commission's stated purpose in requiring rate integration across affiliated companies was to prevent carriers from avoiding the rate integration requirement by creating multiple interexchange carrier subsidiaries, each serving a separate geographic area.[25] The Commission did not indicate any intention to require rate integration across independent affiliated companies that, for legitimate business purposes, have a common ownership interest in a licensee.

For these reasons, the Commission should reconsider its decision to require integration of CMRS rates and clarify the scope of the affiliate requirement. In the alternative, the Commission should either exercise its authority under Section 10 to

---

[23] 47 C.F.R. § 32.9000.

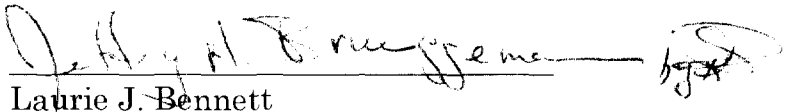
[24] BellSouth Petition at 23.

[25] Reconsideration Order ¶ 15.

forbear from applying its rate integration rule to CMRS carriers or, at a minimum, commence a rulemaking proceeding to craft a sensible compromise.

Respectfully submitted,

U S WEST, INC.

By: 

Laurie J. Bennett
Robert B. McKenna
Jeffry A. Brueggeman
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2763

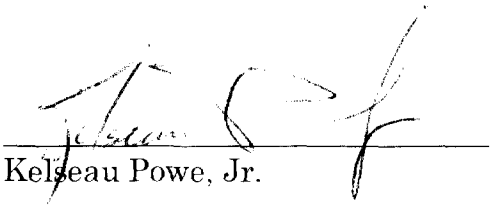
Its Attorneys

Of Counsel,
Dan L. Poole

October 31, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 31st day of October, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served, via first-class United States Mail, postage-prepaid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

*Served via hand-delivery

(CC9661r-COS-ss)

*Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

*A. Richard Metzger, Jr.
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*James D. Schlichting
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*Daniel C. Phythyon
Federal Communications Commission
Room 5002
2025 M Street, N.W.
Washington, DC 20554

*Wanda Harris
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*William Bailey
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*Jeanine Poltronieri
Federal Communications Commission
Room 5002
2025 M Street, N.W.
Washington, DC 20554

*International Transcription
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

George Y. Wheeler
Koteen & Naftalin
Suite 1000
1150 Connecticut Avenue, N.W.
Washington, DC 20036

TDS

William L. Roughton, Jr.
PrimeCo Personal
Communications, LP
Suite 320 South
601 13th Street, N.W.
Washington, DC 20005

Charles D. Cosson
AirTouch Communications
29th Floor
One California Street
San Francisco, CA 94111

Kathleen Q. Abernathy
David A. Gross
AirTouch Communications
Suite 800
1818 N Street, N.W.
Washington, DC 20036

Michael F. Altschul
Randall S. Coleman
Cellular Telecommunications
Industry Association
1250 Connecticut Avenue, N.W.
Washington, DC 20036

Mark J. Golden
Personal Communications
Industry Association
Suite 700
500 Montgomery Street
Alexandria, VA 22314-1561

William B. Barfield
Jim O. Llewellyn
BellSouth Corporation
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, GA 30309-2641

C. Claiborne Barksdale
BellSouth Corporation
Suite 910
1100 Peachtree Street, N.E.
Atlanta, GA 30309-4599

David G. Frolio
BellSouth Corporation
1133 21st Street, N.W.
Washington, DC 20036

S. Mark Tuller
Bell Atlantic Mobile, Inc.
180 Washington Valley Road
Bedminster, NJ 07921

(CC9661r-JB-ss)
Last Update: 10/31/97